

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SPECTRUM PRODUCE
DISTRIBUTING, INC.,

Plaintiff,

v.

FRESH MARKETING, INC.,
FRESH MARKETING FARM, LLC,
MARIA DONATO and
RALPH DONATO,

Defendants.

Civil No. 11-6368 (JBS-KMW)

ORDER

Presently before the Court is the Plaintiff's motion for default judgment against the Defendants Fresh Marketing, Inc., Fresh Marketing Farms, LLC, Ralph Donato and Maria Donato (collectively "the Defendants"). [Docket Item 21.] Pursuant to Fed. R. Civ. P. 55, entry of default is a prerequisite to default judgment. "[N]o default judgment may be entered under either Fed. R. Civ. P. 55(b)(1) or (b)(2) unless a default has previously been entered by the clerk under Fed. R. Civ. P. 55(a). Thus, the entry of default is an essential predicate to any default judgment." De Tore v. Jersey City Public Employees Union, 511 F. Supp. 171, 178 (D.N.J. 1981).

No default has been entered against the Defendants. Accordingly, the Plaintiff's motion for default judgment is

premature and the Court will construe this motion as a motion for entry of default pursuant to Fed. R. Civ. P. 55(a).

The Plaintiff filed its complaint on October 31, 2011, and served the Defendants with the complaint on November 2, 2011. The Defendants' answers were due on November 23, 2011, 21 days after being served with the summons and complaint, pursuant to Fed. R. Civ. P. 12(a)(1). Defendants have not answered or otherwise responded to Plaintiff's complaint. In addition, the Court ordered the Defendants to show cause as to why they should not be preliminarily enjoined and for them to appear before the Court on November 15, 2011. [Docket Item 4.] The Defendants did not respond to the order to show cause and failed to appear on November 15, 2011. Therefore entry of default is warranted pursuant to Rule 55(a).

WHEREFORE IT IS this 14th day of **December, 2011**, hereby ORDERED that the Plaintiff's motion for default judgment is DENIED without prejudice to re-filing as it is procedurally premature.

ORDERED that the Clerk of Court shall enter DEFAULT against Defendants Fresh Marketing, Inc., Fresh Marketing Farms, LLC, Ralph Donato and Maria Donato.

s/ Jerome B. Simandle
JEROME B. SIMANDLE
U.S. District Judge